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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,497	07/16/2003	Masajiro Iwasaki	R2184.0240/P240	8847
24998	7590	11/08/2006	EXAMINER	
DICKSTEIN SHAPIRO LLP 1825 EYE STREET NW Washington, DC 20006-5403			DARNO, PATRICK A	
			ART UNIT	PAPER NUMBER
			2163	

DATE MAILED: 11/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/619,497

Applicant(s)

IWASAKI, MASAJIRO

Examiner

Patrick A. Darno

Art Unit

2163

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-27.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

*EP House*

Continuation of 11. does NOT place the application in condition for allowance because:

The Examiner notes for the record that only new arguments will be addressed. Many of the arguments presented by the Applicant have been regurgitated from the Applicant's previous responses. Therefore, the Examiner directs the Applicant to the Examiner's Final Office Action, which clearly addresses those issues in a clear and precise manner.

The Applicant Argues:

Applicant respectfully submits that, absent hindsight of the claimed invention, one of ordinary skill in the art would not be motivated to combine Pulo and Vrhel, because the technologies of Pulo and Vrhel are significantly different from the claimed invention.

Furthermore, Pulo fails to teach or suggest how to modify Vrhel to obtain the claimed invention. There is therefore no prima facie case of obviousness.

Applicant respectfully submits that there is no motivation to combine the cited references to obtain the invention of claims 5-7, 12-14, 19-21, and 27.

The Office Action has done no more than cite a pair of references, each of which allegedly provides only part of the claimed invention, and allege that their combination renders the invention obvious.

The Examiner Responds:

The Examiner is not persuaded. The Examiner has made it abundantly clear in the Examiner's Final Office Action that the combination of Pulo and Vrhel discloses the Applicant's invention as claimed in claims 5-7, 12-14, 19-21, and 27. For further proof of this, the Examiner directs the Applicant to the Examiner's Final Office Action.

The Examiner respectfully disagrees that the Pulo and Vrhel references disclose significantly different technologies. Both references perform segmenting or decomposing objects using the K-means Algorithm. This is clearly pointed out in the Examiner's Final Office Action.

Note that the Vrhel reference specifically states that using the K-means algorithm to segment and analyze images is well known in the art (Vrhel paragraph [0017], lines 6-9). This is a clear suggestion to combine the references. Furthermore, the Examiner has clearly pointed out for each independent claim the proper motivation to combine references. The Examiner again directs the Applicant to the Examiner's Final Office Action. There is not a single claim rejected under 35 U.S.C. 103(a) that lacks a motivation to combine the references. All dependent claims inherit the motivation from the independent claims.

The Examiner has clearly and precisely presented a prima facie case of obviousness that adheres closely to the guidelines set forth by *Graham v. John Deere Co.*

Finally, in response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Since the Vrhel reference clearly suggests the K-means algorithm in order to segment and analyze images, the Examiner believes that only knowledge, which was within the level of ordinary skill at the time the claimed invention was made, was used in order to construct the Examiner's prima facie case of obviousness. Because only knowledge within the level of ordinary skill at the time the claimed invention was made is used in the Examiner's rejection, it is clear that no knowledge gleaned only from the Applicant's disclosure was used. Therefore, the rejections given under 35 U.S.C. 103(a) are upheld.

Again, the Examiner directs the Applicant to the Examiner's Final Office Action for further clarification or explanation to any issues that still remain unresolved. If Applicant wishes to resume prosecution of this Application, further search and consideration will be required.